



National Health Service Act 2006

2006 CHAPTER 41

PART 6

OPHTHALMIC SERVICES

Duty of Primary Care Trusts in relation to primary ophthalmic services

115 Primary ophthalmic services

- (1) Each Primary Care Trust must exercise its powers so as to provide or secure the provision, within its area, of the following primary ophthalmic services—
 - (a) the sight-testing service mentioned in subsection (2),
 - (b) such other primary ophthalmic services as may be prescribed, and
 - (c) to the extent that it considers necessary to meet all reasonable requirements, any further primary ophthalmic services.
- (2) The sight-testing service mentioned in subsection (1)(a) is a service for testing the sight of all of the following persons (except any such testing which takes place in prescribed circumstances)—
 - (a) those aged under 16,
 - (b) those aged 16, 17 or 18 who are receiving qualifying full-time education,
 - (c) those whose resources must be treated in accordance with regulations as being less than or equal to their requirements,
 - (d) those aged 60 or over,
 - (e) those of such other description as may be prescribed.
- (3) Regulations may—
 - (a) prescribe what “qualifying full-time education” is for the purposes of subsection (2)(b),
 - (b) make provision for the purposes of subsection (2)(c) about how a person’s resources and requirements must be calculated.
- (4) A Primary Care Trust may (in addition to any other power conferred on it)—

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- (a) provide primary ophthalmic services itself (whether within or outside its area),
 - (b) make such arrangements for their provision (whether within or outside its area) as it considers appropriate, and may in particular make contractual arrangements with any person.
- (5) Each Primary Care Trust must publish information about such matters as may be prescribed in relation to the primary ophthalmic services provided under this Act.
- (6) A Primary Care Trust must co-operate with each other Primary Care Trust in the discharge of their respective functions relating to the provision of primary ophthalmic services under this Act.
- (7) Regulations may provide that services of a prescribed description must, or must not, be regarded as primary ophthalmic services for the purposes of this Act (but these regulations may not affect the duty in subsection (1)(a)).
- (8) Regulations under subsection (7) may in particular describe services by reference to the manner or circumstances in which they are provided.
- (9) Regulations may provide that a person—
- (a) whose sight is tested by a person who is a party to a general ophthalmic services contract, and
 - (b) who is shown during the testing or within a prescribed time after it to fall within any of paragraphs (a) to (d) of subsection (2),
- must be taken for the purposes of the testing to have so fallen immediately before his sight was tested.
- (10) In the case mentioned in subsection (9), the testing of his sight must (unless it took place in circumstances prescribed under subsection (2)) be treated as a testing under the sight-testing service mentioned in subsection (1)(a)—
- (a) for the purposes of remuneration in respect of the testing, and
 - (b) for any such other purpose as may be prescribed.

116 Regulations under section 115: supplementary

- (1) Regulations under section 115 which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference must be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made, or
 - (b) both as it has effect at that time and as amended subsequently.
- (2) Descriptions of persons may be prescribed under section 115(2)(e) by reference to any criterion, including the following—
- (a) their age,
 - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition,
 - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances,
 - (d) their receipt of benefit in money or kind under any enactment or their entitlement to receive any such benefit,
 - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.

- (3) Regulations under section 115(3)(b) may direct that a person’s resources and requirements be calculated—
- (a) by a method set out in the regulations,
 - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications,
 - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament, or
 - (d) by reference to the person’s being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.

General ophthalmic services contracts

117 General ophthalmic services contracts: introductory

- (1) A Primary Care Trust may enter into a contract under which primary ophthalmic services are provided in accordance with the following provisions of this Part.
- (2) A contract under this section is called in this Act a “general ophthalmic services contract”.
- (3) A general ophthalmic services contract may make such provision as may be agreed between the Primary Care Trust and the contractor or contractors in relation to—
 - (a) the services to be provided under the contract,
 - (b) remuneration under the contract, and
 - (c) any other matters.
- (4) The services to be provided under a general ophthalmic services contract may include—
 - (a) services which are not primary ophthalmic services,
 - (b) services to be provided outside the area of the Primary Care Trust.
- (5) In this Part, “contractor”, in relation to a general ophthalmic services contract, means any person entering into the contract with the Primary Care Trust.

118 Persons eligible to enter into GOS contracts

- (1) A Primary Care Trust may, subject to such conditions and exceptions as may be prescribed, enter into a general ophthalmic services contract with any person.
- (2) But it may not enter into such a contract with a person who has been disqualified from doing so by an order of disqualification made by virtue of regulations under section 119.

119 Exclusion of contractors

- (1) The Secretary of State may make regulations conferring on a Primary Care Trust, or another prescribed person, a right to apply to the FHSAA in prescribed circumstances for an order that a person (“P”) be disqualified from entering into a general ophthalmic services contract.

- (2) The regulations may in particular provide for—
- (a) the review by the FHSAA of an order of disqualification made by virtue of regulations under this section,
 - (b) what will happen in relation to general ophthalmic services contracts to which P is a party when the order is made.

120 GOS contracts: payments

- (1) The Secretary of State may give directions as to payments to be made under general ophthalmic services contracts.
- (2) A general ophthalmic services contract must require payments to be made under the contract in accordance with directions under this section.
- (3) A direction under subsection (1) may in particular—
- (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance,
 - (b) provide for payments to be made by reference to—
 - (i) any scheme or scale specified in the direction, or
 - (ii) a determination made by any person in accordance with factors specified in the direction,
 - (c) provide for the making of payments in respect of individual practitioners,
 - (d) provide that the whole or any part of a payment is subject to conditions (and may provide that payments are payable by a Primary Care Trust only if it is satisfied as to certain conditions),
 - (e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.
- (4) Before giving a direction under subsection (1), the Secretary of State—
- (a) must consult any body appearing to him to be representative of persons to whose remuneration the direction would relate, and
 - (b) may consult such other persons as he considers appropriate.
- (5) “Payments” includes fees, allowances, reimbursements, loans and repayments.

121 GOS contracts: other required terms

- (1) A general ophthalmic services contract must contain such provision as may be prescribed (in addition to the provision required by the preceding provisions of this Part).
- (2) Regulations under subsection (1) may in particular make provision as to—
- (a) the manner in which, and standards to which, services must be provided,
 - (b) the persons who perform services,
 - (c) the persons to whom services will be provided,
 - (d) the variation of contract terms (other than terms required by or under this Part),
 - (e) rights of entry and inspection (including inspection of clinical records and other documents),
 - (f) the circumstances in which, and the manner in which, the contract may be terminated,

- (g) enforcement,
 - (h) the adjudication of disputes.
- (3) Regulations under subsection (2)(d) may—
- (a) make provision as to the circumstances in which a Primary Care Trust may impose a variation of contract terms,
 - (b) make provision as to the suspension or termination of any duty under the contract to provide services of a prescribed description.
- (4) Regulations making provision of the kind described in subsection (3)(b) may prescribe services by reference to the manner or circumstances in which they are provided.
- (5) Regulations under subsection (1) must make provision as to the right of persons to whom services are provided to choose the persons from whom they receive them.

122 GOS contracts: disputes and enforcement

- (1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general ophthalmic services contract.
- (2) Regulations under subsection (1) may make provision—
- (a) for the referral of the terms of the proposed contract to the Secretary of State, and
 - (b) for the Secretary of State, or a person appointed by him, to determine the terms on which the contract may be entered into.
- (3) Regulations may make provision for a person or persons entering into a general ophthalmic services contract to be regarded, in circumstances where he or they so elect, as a health service body for the purposes of section 9, but only so far as concerns the general ophthalmic services contract (and not for any other purpose).
- (4) Regulations under subsection (3) may include provision as to the application of section 9 in cases where—
- (a) persons practising in partnership elect to become a health service body, and
 - (b) there is a change in the membership of the partnership.
- (5) Where—
- (a) by virtue of regulations under subsection (3), subsection section 9(11) applies in relation to a general ophthalmic services contract, and
 - (b) a direction as to payments is made under that provision in relation to the contract,
- the direction is enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.

Performance of primary ophthalmic services

123 Persons performing primary ophthalmic services

- (1) Regulations may provide that a health care professional of a prescribed description may not perform any primary ophthalmic service for which a Primary Care Trust is responsible unless he is included in a list maintained under the regulations by a Primary Care Trust.

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- (2) For the purposes of this section—
- (a) “health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17),
 - (b) a Primary Care Trust is responsible for an ophthalmic service if it provides the service, or secures its provision, by or under any enactment.
- (3) Regulations under this section may make provision in relation to lists under this section and in particular as to—
- (a) the preparation, maintenance and publication of a list,
 - (b) eligibility for inclusion in a list,
 - (c) applications for inclusion (including provision as to the Primary Care Trust to which an application must be made, and for the procedure for applications and the documents to be supplied on application),
 - (d) the grounds on which an application for inclusion may or must be granted or refused,
 - (e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),
 - (f) suspension or removal from a list (including provision for the grounds for, and consequences of, suspension or removal),
 - (g) circumstances in which a person included in a list may not withdraw from it,
 - (h) payments to be made in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating the payment, to be determined by the Secretary of State or a person appointed by him),
 - (i) the criteria to be applied in making decisions under the regulations,
 - (j) appeals against decisions made by a Primary Care Trust under the regulations, and
 - (k) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,
- and may make any provision corresponding to anything in sections 151 to 159.
- (4) Regulations under this section may, in particular, also provide for—
- (a) a person’s inclusion in a list to be subject to conditions determined by a Primary Care Trust,
 - (b) a Primary Care Trust to vary the conditions or impose different ones,
 - (c) the consequences of failing to comply with a condition (including removal from a list),
 - (d) the review by a Primary Care Trust of decisions made by it by virtue of the regulations.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which a list relates, or
 - (b) preventing fraud.
- (6) Regulations under this section may, in particular, also prescribe the qualifications and experience which a medical practitioner who applies for inclusion in a list under this section must have, and may—

- (a) provide for the practitioner to show to the satisfaction of a committee recognised by the Secretary of State for the purpose that he possesses such qualifications and experience,
 - (b) confer on a person who is dissatisfied with the determination of such a committee a right of appeal to a committee appointed by the Secretary of State, and
 - (c) provide for anything which appears to the Secretary of State to be appropriate in connection with that right of appeal.
- (7) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—
- (a) by a Primary Care Trust to the Secretary of State, and
 - (b) by the Secretary of State to a Primary Care Trust.

Assistance and support

124 Assistance and support: primary ophthalmic services

- (1) A Primary Care Trust may provide assistance or support to any person providing or proposing to provide primary ophthalmic services under a general ophthalmic services contract.
- (2) Assistance or support provided by a Primary Care Trust under subsection (1) is provided on such terms, including terms as to payment, as the Primary Care Trust considers appropriate.
- (3) “Assistance” includes financial assistance.

Local Optical Committees

125 Local Optical Committees

- (1) A Primary Care Trust may recognise a committee formed for its area, or for its area and that of one or more other Primary Care Trusts, which it is satisfied is representative of—
 - (a) the persons to whom subsection (2) applies, and
 - (b) the persons to whom subsection (3) applies.
- (2) This subsection applies to each person who, under a general ophthalmic services contract entered into by him, is providing primary ophthalmic services in the area for which the committee is formed.
- (3) This subsection applies to each optometrist not falling within subsection (2)—
 - (a) who is performing primary ophthalmic services in the area for which the committee is formed, whether under section 115(4)(a), or under a general ophthalmic services contract, and
 - (b) who has notified the Primary Care Trust that he wishes to be represented by the committee (and has not notified it that he wishes to cease to be so represented).
- (4) A committee recognised under this section is called the Local Optical Committee for the area for which it is formed.

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- (5) Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.
- (6) Any such committee may co-opt persons not falling within subsection (2) or (3) on such terms as it considers appropriate.
- (7) Regulations may require a Primary Care Trust, in the exercise of its functions relating to primary ophthalmic services, to consult any committee recognised by it under this section on such occasions and to such extent as may be prescribed.
- (8) A committee recognised under this section has such other functions as may be prescribed.
- (9) A committee recognised under this section must in respect of each year determine the amount of its administrative expenses for that year.
- (10) A Primary Care Trust may—
 - (a) on the request of a committee recognised by it, allot to that committee such sums as the Primary Care Trust may determine for defraying the committee's administrative expenses, and
 - (b) deduct the amount of such sums from the remuneration of persons of whom the committee is representative under subsection (1)(a) under the general ophthalmic services contracts entered into by those persons with the Primary Care Trust.
- (11) The administrative expenses of a committee include the travelling and subsistence allowances payable to its members.